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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Courtney Jane Best-Simpson - Pro Se

Plaintiff

11 Civ. 8451

-against-

(PKC) (TKH)

Robert Gosseen, et al.

## Defendants

## Notice of Dismissal

Pursuant to

41(a)(1)(A)(i)

# Federal Rules of Civil Procedure

SIRS / MADAM:

PLEASE TAKE NOTICE that pursuant to 41(a)(1)<sup>(A)(i)</sup> of the Federal Rules of Civil Procedure, the Plaintiff Courtney Jane Best-Simpson files the attached Notice of Dismissal of the Within Action 11 Civ. 8451.

Dated : February 28, 2012

  
COURTNEY JANE BEST-SIMPSON - PRO-SE  
430 Clinton Ave 6D  
Bklyn, NY 11238  
347-513-9576

11 Civ 8451

41(a)(1)(A)(i)

(PKC) (TKH)

Notice of Dismissal

I, Courtney Jane Best-Simpson, the pro-se plaintiff

in 11Civ.8451 (PKC) (TKH) USDC:SDNY; formerly removed from

NYS Supreme Court:County of NY 11-111313 on November 22, 2011;

do hereby affirms under the penalties of perjury that

this plaintiff, having only filed and served a Summons with Notice

and an Amended Summons with Notice prior to the removal of said

action; and with a complaint due on March 2, 2012, having been

Ordered by this Court on February 8, 2012 (PKC), do hereby on

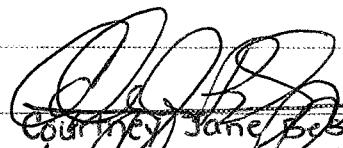
February 28, 2012, prior to the date that the Complaint is even due;

will forego filing a complaint and will instead pursuant to Rule

(A)(1)

41(a)(1) of the FRCP file this Notice of Dismissal, without Prejudice.

Dated: February 28, 2012

  
Courtney Jane Best-Simpson  
430 Clinton Ave #6D  
Bklyn, N.Y. 11238  
347-513-9576

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: <u>2-8-12</u>

COURTNEY JANE BEST-SIMPSON,

Plaintiff,

-against-

ROBERT GOSSEEN, et al.,

Defendants.

ORDER  
11 Civ. 8451 (PKC)

X

P. KEVIN CASTEL, United States District Judge:

This action was commenced in the Supreme Court of the State of New York, New York County (“New York State Supreme Court”), on October 4, 2011, and removed to this Court on November 22, 2011. (Docket No. 1.) Prior to removal, plaintiff Courtney Jane Best-Simpson, appearing pro se, filed a Summons with Notice, as authorized under state law, asserting 55 causes of action, including civil rights violations, obstruction of justice, conspiracy and state law violations, against approximately 54 defendants, both private and public. Two defendants, United States District Court Judge Barbara S. Jones and United States Magistrate Judge Andrew J. Peck (the “Federal Defendants”), removed the action to this Court pursuant to 28 U.S.C. §§1441(a) and 1442(a)(3), on grounds that the Federal Defendants are officers of the courts of the United States. Plaintiff has moved to remand.

For the reasons explained, plaintiff is directed to file an amended complaint to the Court on or before March 2, 2012. The Court need not decide plaintiff’s motion to remand at this time.

### BACKGROUND

On or about October 4, 2011, plaintiff commenced this action by filing a Summons with Notice in the New York Supreme Court against, by the Court's count, approximately 54 defendants, including the Federal Defendants.<sup>1</sup> A Summons with Notice is not, under state law, the equivalent of a complaint. It need only recite the "nature of the action" and the relief sought. CLPR 305(b). A complaint may thereafter be demanded by the defendant. CLPR 3012(b). Upon service of the demand, the complaint must be served within twenty days. Id.

From the face of the Summons with Notice, plaintiff alleged a conspiracy among the defendants to violate her rights stemming from defendants' alleged involvement in a prior employment discrimination action in this District, Best-Simpson v. New York Donor Network, et al., No. 07 Civ. 02683 (BSJ) (AJP) (S.D.N.Y. Apr. 2, 2007), which was filed by plaintiff's mother, Jane Best-Simpson, and ultimately dismissed. (Docket No. 1.) On October 24, 2011, plaintiff filed an amended Summons with Notice. (Docket No. 1.) On November 22, 2011, the Federal Defendants filed a notice of removal in this Court based on plaintiff's claims against the two Federal Defendants. (Docket No. 1.) Plaintiff filed a motion to remand her case to state court on December 22, 2011, arguing that the Federal Defendants' removal was untimely, and that she had dismissed the Federal Defendants from this action by filing a notice of discontinuance in state court on the same day that the Federal Defendants removed the action. (Docket No. 13.)

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<sup>1</sup>The defendants also include the "Empire State Building-WH Properties," the New York Organ Donor Network, New York City Mayor Michael Bloomberg, Local 32BJ SEIU, numerous other natural persons and certain elevator-related and private security firms.

On January 23, 2012, defendants Empire State Building Company, LLC, ESB Observatory LLC, Malkin Holdings LLC, Peter Malkin, Don Knutella, Antoinette Gardiner, Ed Levy and Donald O'Donnell filed an opposition to plaintiff's motion to remand. (Docket No. 12.) They contend that the removal was timely and that even if the Federal Defendants were dismissed from this action, plaintiff's amended Summons with Notice asserted federal claims over which the Court has federal question jurisdiction. (Docket No. 12.) Defendant Service Employees International Union, Local 32 BJ also filed an opposition to the motion to remand on January 23, 2012, similarly contending that plaintiff's claims against the union constitute breach of duty of fair representation, which are preempted by federal labor law, and that those claims were properly before the Court. (Docket No. 15.)

On January 27, 2012, plaintiff filed a proposed order to show cause. It seeks an order that the defendants show cause as to "why this Court should not 1) Honor the plaintiff's Courtney Jane Best-Simpson intent . . . to drop certain parties from the within action," as well as "[e]xtend the plaintiff the request of withdrawing and discontinuing the actions against all other parties . . . without prejudice," subject to "the right to reinstitute said action within the next 6 months . . ." (Order to Show Cause at 2-3.) The Court has not acted on the proposed order to show cause and declines to do so at this juncture.

## DISCUSSION

### A. Plaintiff is Directed to File a Complaint that Satisfies Rule 8.

Because no complaint has been filed, plaintiff's allegations against defendants are not readily understood. Plaintiff, a former employee at the observatory deck of the Empire State Building, asserts that on August 5, 2010, an intruder appeared in the women's employee locker

room at the Empire State Building while she was undressing. (Docket No. 1). Plaintiff alleges that the intruder gazed at her partially dressed body and could have assaulted, raped or killed her if she had not reacted quickly. (Id.) Plaintiff then attributes this incident to a conspiracy targeting her for humiliation, racial and sexual harassment and retaliation because of an employment discrimination lawsuit her mother had filed in this District. (Id.) Plaintiff describes the alleged injustices that her mother was subjected to during and after the litigation of that lawsuit, and the apparent spillover of the damage to her life. (Id.)

Considering plaintiff's pro se status, the nature of her allegations and the dozens of defendants she seeks to sue, the Court directs her to file an amended complaint specifying the nature of her claims against each defendant. An amended complaint is necessary both to satisfy Rule 8 of the Federal Rules of Civil Procedure and to clarify whether this Court has subject matter jurisdiction over the action. Rule 8(a)(2) of the Federal Rules of Civil Procedure requires "a short and plain statement of the claim showing that the pleader is entitled to relief," and Rule 8(d)(1) requires that each allegation be "simple, concise, and direct." The Supreme Court has stated that:

a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). This standard, commonly referred to as the "plausibility standard," is guided by two principles. First, while district courts must accept as true all factual allegations contained in a complaint, "[t]hreadbare recitals of the elements of a cause of action, supported by mere

conclusory statements, do not suffice.” Id. Second, when deciding what is plausible, a district court must consider the context and “draw on its judicial experience and common sense.” Id. at 1950.

District courts are “obligated to construe pro se complaints liberally.” Harris v. Mills, 572 F.3d 66, 72 (2d Cir. 2009); see Sealed Plaintiff v. Sealed Defendant # 1, 537 F.3d 185, 191 (2d Cir. 2008); Boykin v. KeyCorp, 521 F.3d 202, 213-14, 216 (2d Cir. 2008). Thus, while pro se complaints must contain sufficient factual allegations to meet the plausibility standard, district courts should look for such allegations by reading pro se complaints with “special solicitude” and interpreting them to raise the “strongest [claims] that they suggest.” Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474-75 (2d Cir. 2006) (per curiam) (emphasis in original).

Despite plaintiff’s invocation of criminal and civil rights statutes, she fails to allege plausible facts to support her claims. The Summons with Notice contains “unadorned, the-defendant-unlawfully-harmed-me accusation[s]” and offer only “labels and conclusions.” Iqbal, 129 S. Ct. at 1951 (citation omitted). The Summons with Notice fails to allege plausible facts showing that defendants acted unlawfully. In consideration of plaintiff’s pro se status, however, she is granted leave to submit a complaint in compliance with Rule 8 on or before March 2, 2012.

B. Leave to File Complaint.

Plaintiff is granted leave to file a complaint alleging facts to support her claims against each defendant named in the amended summons with notice. To the extent plaintiff no longer wishes to bring claims against a particular defendant, she may simply omit them from the

complaint.<sup>2</sup> Plaintiff must provide a short plain statement of the relevant facts supporting each claim against each defendant named in the complaint. To the greatest extent possible, plaintiff's complaint must:

- (a) give the names and titles of all relevant persons;
- (b) describe all relevant events, stating the facts that support plaintiff's case including what each defendant did or failed to do;
- © give the dates and times of each relevant event or, if not known, the approximate date and time of each relevant event;
- (d) give the location where each relevant event occurred;
- (e) describe how each defendant's acts or omissions violated plaintiff's rights and describe the injuries plaintiff suffered; and
- (f) state what relief plaintiff seeks from the Court, such as money damages, injunctive relief, or declaratory relief.

Essentially, the body of plaintiff's complaint must tell the Court: who violated her rights; what facts show that her rights were violated; when such violation(s) occurred; where such violation(s) occurred; and why plaintiff is entitled to relief.

C. Plaintiff's Motion to Remand.

I need not rule on the plaintiff's motion to remand at this time. While plaintiff's motion argues in part that removal was untimely and that her decision to dismiss the Federal Defendants from this case deprives the Court of jurisdiction, there are factual disputes relating to plaintiff's

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<sup>2</sup> Plaintiff alleges in her motion to remand that she filed a notice of discontinuance dismissing a number of defendants, including the Federal Defendants. Plaintiff may omit any currently named defendant from the complaint.

service and the timing of removal. An amended complaint that omits the Federal Defendants and sets forth no federal cause of action may make it unnecessary to address these disputes.

Separately and independently, the plaintiff's summons and notice sets forth numerous causes of action that may arise under federal law, and that if, properly alleged, would give this Court federal subject matter jurisdiction over the action. The causes of action that would likely give this Court federal question jurisdiction may include the following: "Violation of Civil Rights of the Plaintiffs" (Summons and Notice, 1.a); "Violation of various federal Civil Rights Statues" (id., 1.c); "Violation of RICO ACT" (id., 1.g); "Violation of HIPPA" (id., 1.I); "Violation of Title VII - Civil Rights Laws" (id., 1.o); "Deprivation – of Civil Rights to Property Interest" (id., 1.z); "Violation of the Americans with Disability Act" (id., 1.bb); "Violation of Section 504 of the 1973 Rehabilitation Act" (id., 1.cc); "Conspiracy for Protected Activity" (id., 1.pp); "Violation of Due Process" (id., 1.qq); "Violation of Civil Right to Life, Liberty and Pursuit of Happiness" (id., 1.ss); "violation of various City, State Federal Civil Statutes" (id., 1.zz; emphasis added); "violation of various federal, State and City Criminal Statutes" (id., 1.aaa; emphasis added).

**D. Plaintiff's Order to Show Cause.**

As previously noted, plaintiff's Order to Show Cause of January 27 seeks "to drop certain parties from the within action," as well as "[e]xtend the plaintiff the request of withdrawing and discontinuing the actions against all other parties . . . without prejudice . . ." (Order to Show Cause at 2-3.) This Order gives plaintiff an opportunity to amend her pleading to name or omit any party of her choosing. To the extent that the Order to Show Cause seeks leave to dismiss the action subject to reinstatement, I note that Rule 41(a)(1) of the Federal Rules of Civil Procedure

states that "the plaintiff may dismiss an action without a court order by filing: (I) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment," and that "[u]nless the notice or stipulation states otherwise, the dismissal is without prejudice."

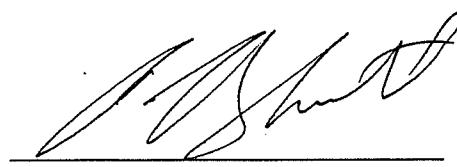
### **CONCLUSION**

Plaintiff is directed to file a complaint containing the information specified above. The complaint must be submitted to the Court's Pro Se Office on or before March 2, 2012, be captioned as a "**COMPLAINT**," and bear the same docket number as this Order. If plaintiff fails to comply within the time allowed, the action will be dismissed.

Plaintiff is encouraged to make use of the resources available to her through the District's Pro Se Office. Plaintiff should not contact the judge's chambers with procedural or legal questions.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED:



P. KEVIN CASTEL  
United States District Judge

Dated: February 8, 2012  
New York, New York

Re: Best-Simpson v. Gosseen et al  
11 Civ. 8451 USDC:SDNY  
Formerly removed from  
Supreme Court of the State  
of NY County of NY  
11-111313

Affidavit of Service: Notice of Dismissal  
Pursuant to 41(a)(1)(A)(i)

I, Jane Best-Simpson, being duly sworn  
deposes and says: I am not a party to the  
within action, am over the age of 18 and reside  
in Brooklyn, New York

On March 1, 2012 I served the  
attached Plaintiff's Courtney Jane Best-Simpson's  
Notice of Dismissal, pursuant to 41(a)(1)(A)(i) Rule  
of the Federal Rule of Civil Procedure 11 Civ 8451  
USDC:SDNY (PKC) (TKH), dated February 28, 2012;  
Upon the following defendants and or Counsel.

1) Robert Gosseen, Esq.  
New York Organ Donor Network  
Elaine Berg  
Michele Clayton Lucas  
Martin Wolf  
Julia Rivera

c/o Robert Gosseen, Esq.  
Gafner & Shore  
360 Lexington Ave  
N.Y. NY 10017

2. Judge Barbara Jones  
Magistrate Andrew Peck

c/o Amy Barcelo - Asst. U.S. Attorney  
United States Attorney-Civil Division  
United States Southern District of NY  
86 Chambers Street  
NY NY 10007

3. NY City Commission on Human Rights

New York City Police Department, its agent, servants, Employees

Mayor Michael Bloomberg

Patricia Gaffin, Commissioner NYC Commission on Human Rights

Raymond Wayne, Lanny Alexander, Cliff Mulqueen

Avery Melhman

PO McLaughlin Badge # 12640 NYPD

Retired Officer Alvin Reed

c/o

Corporation Counsel of the  
City of New York

100 Church street

NY, NY. 10007

4. Marc Crawford Leavitt, in his personal and professional capacity  
and part owner of 430 Clinton Avenue Associates

c/o 228 East 45<sup>th</sup> Street

17<sup>th</sup> floor NY, NY 10017

Attn: Leavitt, Kerson & Duane

5. Andrews International Security

Ralph DelGardo

Angel Fernandez

Martin Rivera

Alicia Perez

c/o Wilson, Elser, Moskowitz,

Edelman, Dicker LLP

1010 Washington Blvd

Stamford, CT 06901

Attn: Jennifer Heitman

6.

Local 32 BJ SEIU and

Tom Petrowski

c/o Local 32 BJ SEIU

25 West 18

New York, N.Y. 10011-4676

7. New York Elevator and

its Employee Dennis Long

See #12 for the address of Counsel  
where it was sent.

8. Empire State Building Company LLC

ESB Observatory LLC

named as Empire State Building/WH Properties

Malkin Holdings LLC

named as Malkin Properties

Peter Malkin

Don Knutella

Antonette Gardiner

Ed Levy

Donald O'Donnell

c/o

Jackson & Lewis LLP

666 Third Avenue

New York, New York 10017

Attn: Daniel Schudroff

9. Liberty Elevator

c/o Chesney & Murphy LLP

2305 Grand Avenue

Baldwin, NY 11510

10. Gallagher, Gosseen & Faller

1050 Franklin Avenue Suite 400  
Garden City NY 11530

Garcia & Stallone

11. Counsel for Gallagher, Gosseen & Faller

2076 Deer Park Avenue  
Deer Park, New York 11729-2102

12.

New York Elevator Company  
and its Employee

Dennis Long

c/o Babchik & Young LLP  
200 East Post Road  
White Plains, NY 10601

13. Lewis Brisbois, Bisgaard & Smith LLP

77 Water Street - Suite 2100

New York NY 10005

c/o Mark Kenneth Anesh, Esq  
Jordan Kaplan, Esq

Counsel for Alan Tannebaum, Esq &  
Cohen, Hurkin, Pomerantz, Ehrenfeld & Tannebaum

Service of the attached Notice of Dismissal

of the plaintiff Courtney Jane Best-Simpson, was served

by me personally by delivering each individual envelope

affixed with the respective address as stated on this

affidavit; to the United States Postal office located at

90 Church Street, NY NY 10007, where the proper postage

was paid to a US Postal Clerk and affixed accordingly

on each respective envelope to insure that they would

be mail regular mail to each individual respective party

stated in this affidavit. Said US Postal clerk took possession of  
each individual envelope then to mail to each party so stated.

Subm to me before this 3/1/12 day came

Jane Best-Simpson  
Jane Best-Simpson

Notary Seal & Signature

MAXINE WHITE  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN KINGS COUNTY  
REG. #01WH6238055  
MY COMM. EXP. MAR. 28, 2015

3/1/12  
Maxine White